

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Special Permit #1610C

DATE: December 13, 2002

SCHEDULED PLANNING COMMISSION MEETING:

DATE: January 8, 2003

PROPOSAL: Amend Special Permit #1610B to waive the front yard setback to 19.5 feet for the southernmost garage along North 58th Street, and revise the rear yard setback to 4.5 feet for the westernmost garage along the north lot line. Both garages are detached from the main building.

WAIVER REQUESTS: Adjust the front yard from 20 feet to 19.5 feet, applicable only to the southernmost garage along North 58th Street.

LAND AREA: This Special Permit contains an area of 6.23 acres, more or less.

CONCLUSION: This amendment proposes to correct the plans to show the setbacks for these two garages as they were actually built on site.

RECOMMENDATION:

Conditional Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: A portion of vacated Benton Street right-of-way, vacated North 57th Street right-of-way, the south half of Blocks 141 and 142, the north half of Blocks 157 and 158, and Lot 12, Block 157, and Lot 7, Block 158, Havelock, all located in the southwest quarter of Section 9, Township 10 North, Range 7 East of the 6th P.M., City of Lincoln, Lancaster County, Nebraska.

LOCATION: 57th and Fremont Streets.

APPLICANT: Joyce-Hinkley Limited Partnership
8101 O Street, Ste. 100
Lincoln, NE 68510
(402) 489.3387

OWNER: Same as Applicant

CONTACT: Dana Baker
6101 South 56th Street, Ste. D
Lincoln, NE 68516
(402) 420.1211

EXISTING ZONING: R-5, except for Lot 12, Block 157, Lot 7, Block 158, and vacated North 57th Street right-of-way, which are zoned R-2.

EXISTING LAND USE: Combined domiciliary care and elderly housing facility.

SURROUNDING LAND USE AND ZONING:

North:	Industrial	I-1 Industrial
South:	Residential	R-2 Residential
East:	Victor E Anderson Library	P Public
	Fire Station #5	P Public
West:	Residential	R-5 Residential

HISTORY:

Jan 2001	Administrative Amendment #00094 to Special Permit # 1610B allowed two non-illuminated signs to be mounted to an existing fence.
Apr 1999	Special Permit 1610B added 3 elderly housing units (one single-family and one duplex) to the existing domiciliary care facility, reduced the rear yard setback of the duplex unit from 30 feet to 19 feet, and waived the requirement of sidewalks along North 58 th Street.
Apr 1998	Administrative Amendment #98011 to Special Permit #1610A revised the parking lot and driveway configuration and added garages along the north property line.
Jun 1997	Special Permit #1610A reoriented the primary access towards Fremont Street instead of North 58 th Street, reoriented the buildings, and increased the number of individuals that can be cared for in the domiciliary care facility to 333 persons.
Jun 1996	Special Permit 1610 approved a 327 person domiciliary care facility.
Jun 1996	Change of Zone #2986 from I-1 Industrial to R-5 Residential.

1979 Zoning Update Prior to update, this property was zoned K Light Industrial and A-2 Single-Family Residential. The update changed the zoning to I-1 Industrial and R-2 Residential.

ANALYSIS:

1. This is a request to amend Special Permit #1610B to waive the front yard setback to 19.5 feet for the southernmost garage along North 58th Street, and revise the rear yard setback to 4.5 feet for the westernmost garage along the north lot line. Both garages are detached from the main building.
2. Special Permit #1610B shows the east garage with a 20 foot setback, which meets the minimum required front yard setback for buildings in the R-5 district of 20 feet. The as-built setback for the east garage is 19.5 feet.
3. Special Permit #1610B shows the north garage with a 5 foot setback, which exceeds the minimum required rear yard setback for accessory buildings in the R-5 district of 2 feet. The as-built setback for the north garage is 4.5 feet.
4. Applicant has indicated that these two garages were constructed within the setback as shown on Special Permit #1610B as a result of contractor errors and deviation from the staked site plan. Applicant believes the builder may have framed the garages to the stakes without considering the additional width necessary for wall sheathing and brick veneer.
5. A review by the Building and Safety Department indicates that Special Permits #1610 and #1610A approved a domiciliary care facility. The subsequent Special Permit #1610B, which added elderly housing, approved a combined domiciliary care and elderly housing facility.
6. Pursuant to LMC §27.63.210, under a special use permit, the yard requirements of the R-5 zoning district may be adjusted for elderly housing facilities. This same flexibility is not granted for domiciliary care facilities under § 27.63.530. Therefore, under Special Permit #1610B, the City Council may review and adjust yard setbacks to less than minimum standard requirements.
7. There are no objections to this amendment from other City Departments.

CONDITIONS:

Site Specific:

1. After Applicant revises the site plan to show the actual setbacks for the east and north garages as identified in this permit and submits the documents and plans to the Planning Department office and the plans are found to be acceptable, the application will be scheduled on the City Council agenda.
2. This approval permits modification to the front yard setback for the southernmost garage along North 58th Street from 20 feet to 19.5 feet, and revision of the rear yard setback for the westernmost garage along the north lot line from 5 feet to 4.5 feet.

General:

3. The construction plans shall comply with the approved plans.
4. The operation and the premises are to meet appropriate local and state licensing requirements, including compliance with health codes.

STANDARD CONDITIONS:

5. The following conditions are applicable to all requests:
 - 5.1 All development and construction shall be completed in compliance with the approved plans.
 - 5.2 All privately-owned improvements shall be permanently maintained by the owner or an appropriately established homeowners association approved by the City Attorney.
 - 5.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 5.4 This resolution's terms, conditions, and requirements bind and obligate the Permittee, its successors and assigns.
 - 5.5 The Applicant shall sign and return the Letter of Acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative

amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.

6. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Greg Czaplewski
Planner

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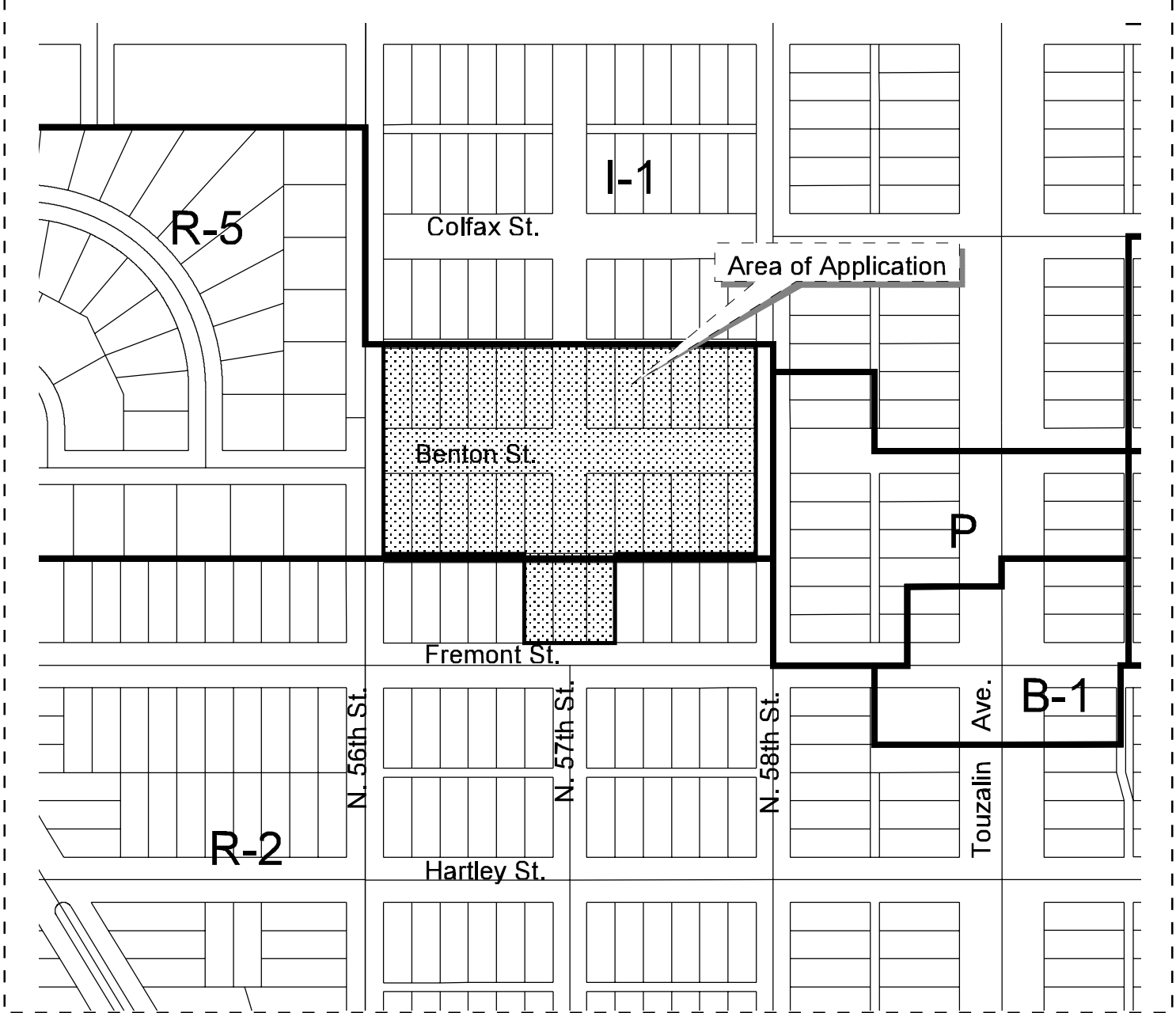


Special Permit # 1610C
Legacy Gardens
56th & Fremont



Photograph Date: 1997

Lincoln City - Lancaster County Planning Dept.

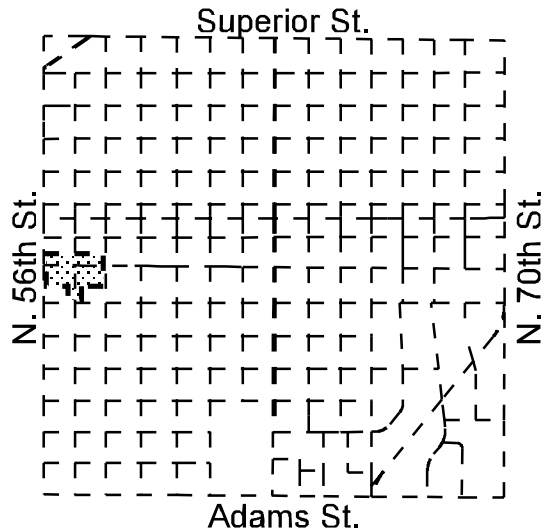
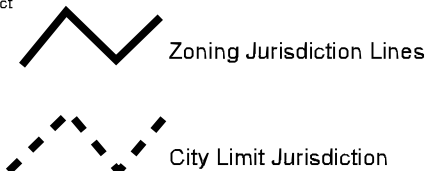


Special Permit # 1610C **Legacy Gardens** **56th & Fremont**

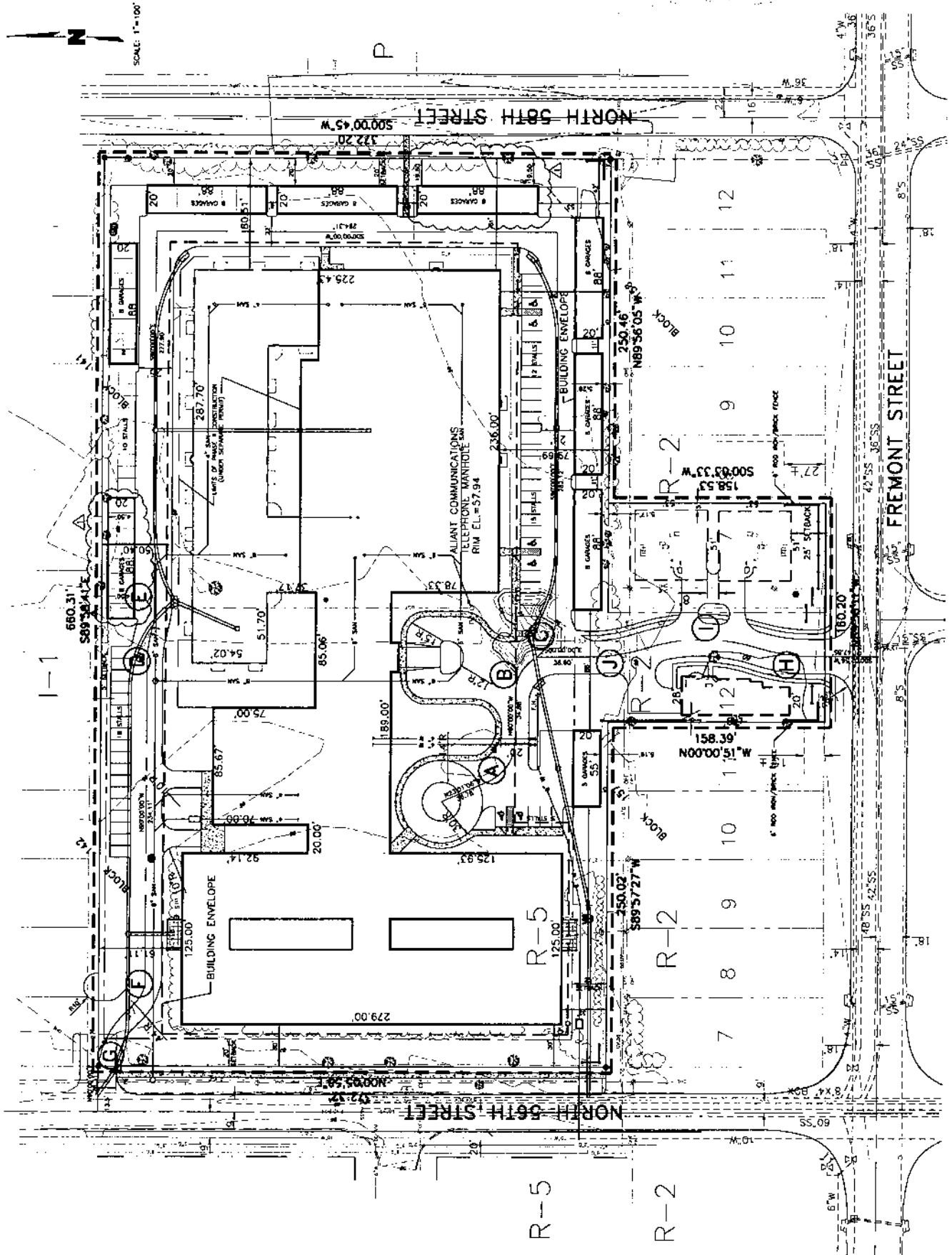
Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use Center District

One Square Mile
 Sec. 9 T10N R7E



REC 26 7002



LAW OFFICES OF
JOHNSON & BAKER, P.C.
LINCOLN TRADE CENTER
6101 SOUTH 58TH STREET, SUITE D
LINCOLN, NEBRASKA 68516-3652
TELEPHONE (402) 420-1211
FAX (402) 420-1216

MICHAEL R. JOHNSON
DANA V. BAKER

LEGAL ASSISTANT:
JOYCE PARDEE, CLA

November 20, 2002

Mike DeKalb
Interim Planning Director
County-City Building
555 South 10th Street
Lincoln, Nebraska 68508

RE: Amendment to Special Permit No. 1610B
Garage Setback Variances

Dear Mike:

Joyce-Hinkley Limited Partnership is the owner and developer of The Legacy Terrace domiciliary care facility, including elderly housing, located at 5700 Fremont Street. This property was approved as a domiciliary care facility by Special Permit No. 1610 and amendments thereto, amended to provide a change in primary access and to reorient the buildings by Special Permit No. 1610A, and to add elderly housing units to the domiciliary care facility by Special Permit No. 1610B.

A survey of the property in 2001 in connection with the refinancing of this property, found that an accessory garage along the north property line was located 4.5 feet from the north property line when the special permit specified a distance of 5.0 feet, and an accessory garage located on the east property line was located 19.6 feet from the property line when the special permit specified a distance of 20.0 feet. These projections into the setbacks apparently occurred as a result of contractor errors and deviation from the staked site plan. It is believed the builder may have framed to stakes without considering additional width for sheathing and brick veneer. It has been determined that the 5.0 foot setback from the north property line was required by the special permit, while the district setback for a detached accessory garage is 2.0 feet. The 20.0 foot setback for the east detached accessory garage was required by the special permit and is also the minimum setback required for a front yard in R-5 district regulations.

Joyce-Hinkley Limited Partnership is requesting a special permit amendment by the Lincoln City Council to Special Permit No. 1610 and amendments thereto for this property under Section 27.63.210 (a) LMC to adjust the yard setback requirements to a rear yard

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11-21-2002 BY 1043

Mike DeKalb
November 20, 2002
Page 2

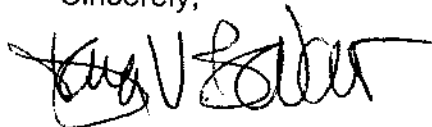
setback of 4.5 feet for the infringing north garage and a front yard setback of 19.6 feet for the infringing east garage. The requested variances are permissible in this instance because the legal description for Special Permit No. 1610B approving the addition of elderly housing units to the facility defined the entire property as a combined domiciliary care and elderly housing facility. Setback requirements for elderly care facilities may be modified by the City Council for elderly care facilities under the provisions of Section 27.63.210 (a) LMC.

Enclosed please find the following documentation for the proposed amendments:

1. Copy of August 2, 2002 opinion letter from Building and Safety regarding the need for variances.
2. Application fee of \$585.00.
3. Application.
4. Site Plan (8 copies).
5. Certificate of ownership.

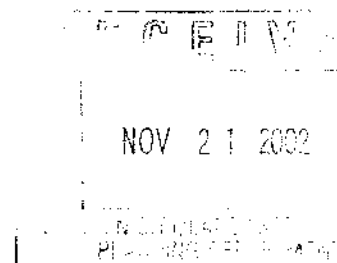
I look forward to working with the City on these variances. If you have any questions or need any further information, please call me.

Sincerely,



Dana V. Baker

DVB:cd
Enclosures
cc: Jerry Joyce, Joyce-Hinkley Limited Partnership



Lincoln



Nebraska's Capital City

August 2, 2002

Dana V. Baker
Johnson & Baker, P.C.
6101 S. 58th St., Suite D
Lincoln, NE 68516-3652

AUG 07 2002

RECEIVED

PLANNING DEPARTMENT

NOV 21 2002

RE: 5700 Fremont Street, Lincoln, Nebraska.

Dear Dana;

This letter is in response to your request regarding the need for a variance for the setback for two accessory garages on the above referenced property. This property was approved as a domiciliary care facility by Special Permit No. 1610 and amendments thereto, amended to provide a change in primary access and to reorient the buildings, for a domiciliary care facility, by Special Permit No. 1610A, and to add elderly housing units to the domiciliary care facility, by Special Permit No. 1610B.

A survey of the property in connection with refinancing of this property, found that an accessory garage, along the north property line was located 4.5 feet from the north property line when the special permit plan specified a distance of 5.0 feet, and an accessory garage located on the east property line was located 19.6 feet from the property line when the special permit plan specified a distance of 20 feet. It should be noted that the 5-foot setback from the north garage to the north property line is required by the special permit, while the district setback requirement for a detached accessory garage is 2 ft. The 20-foot setback for the east detached accessory garage is required by the special permit and is also the minimum setback required for a front yard in R-5 district regulations.

You have advised that a prior communication with this department indicated that General Note No. 8 on the approved Special Permit No. 1610 site plan allowed and did not restrict certain projections into the setbacks. After review of General Note No. 8 of approved Special Permit No. 1610, and amendments thereto, it is determined that this general note will not permit the projection, as described, of these two detached garages into the setbacks as shown by the special permit approval.

Remedies to satisfy the special permit required setbacks include, but are not limited to, the following:

1. Since this special permit has been amended, by Special Permit No. 1610B, to also include elderly housing, Lincoln City Council may amend the special permit, under Section

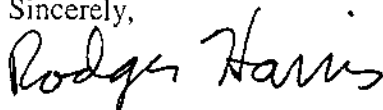
27.63.210(a) LMC to adjust the yard setback requirements. A request for an administrative amendment to the special permit, under Section 27.63.030 LMC, may be requested of the Planning Director, to reduce the rear yard setback for the north garage, but not for the east garage. The Planning Director may consider an amendment that reduces the yard setback to not less than that required by the district regulations, or as granted by a variance. The district regulations, for a detached accessory garage in this case, would not be less than a 2 ft. setback. The setback for the east garage from the east property line is a 20-foot front yard setback, required by the special permit approval and is also the minimum front yard setback specified by the district regulations. This front yard setback may not be amended, by an administrative amendment to the special permit, to less than a 20-foot front yard as required by the district regulations in the R-5 Residential district, unless previously granted a variance by the Board of Zoning Appeals.

2. The Board of Zoning Appeals may consider an appeal to vary the district height and area regulations, which includes the yard setback requirements for the east accessory garage. The north accessory garage, located 4.5 feet from the north property line, is not consistent with the special permit specified setback, but is consistent with the district minimum yard setback, thus appeal to the Board of Zoning Appeals, to vary the setback for the north garage, is not an option.
3. Of course other options to remedy this situation, without regard to practicality, could include acquisition of additional land adjacent these garages or relocation of the garages.

It should be noted that Special Permit No. 1610 and 1610A approved a domiciliary care facility under Section 27.63.530 LMC. This section only provides that if the lot is one acre or more, the *height* requirements of the district may be adjusted by Lincoln City Council, but does not provide for adjustment or modification of setback requirements by Lincoln City Council. A subsequent Special Permit No. 1610B approved the addition of three elderly housing units to the existing domiciliary care facility, and which legal description defined the entire property as a combined domiciliary care and elderly housing facility. The Lincoln City Council may modify the setback requirements for elderly care facilities under provisions of Section 27.63.210(a) LMC.

I trust this will provide the information you require. Should you have further questions, please contact this department.

Sincerely,



Rodger Harris
Zoning Coordinator

PC: Chuck Zimmerman
file

5700_Fremont5.zlt

